

Message Text

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ACDA-07 /073 W

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O R 281720Z JUL 77
FM AMEMBASSY BONN
TO SECSTATE WASHDC IMMEDIATE 0174
INFO USMISSION USBERLIN
AMEMBASSY LONDON
AMEMBASSY PARIS
AMEMBASSY BERLIN
AMEMBASSY MOSCOW
USMISSION NATO

C O N F I D E N T I A L SECTION 01 OF 03 BONN 12426

E.O. 11652: GDS
TAGS: PGOV BQG
SUBJECT: LORENZ/DRENCKMANN TRIAL IN BERLIN: ALLIED
PRESS STATEMENT AND POSSIBLE SOVIET PROTEST

REFS: (A) BONN 12295; (B) 76 BONN 13126;
(C) 76 BONN 12111

BEGIN SUMMARY. THE BONN GROUP HAS REACHED AD REF
AGREEMENT ON A STATEMENT FOR USE IN RESPONDING TO PRESS
INQUIRIES CONCERNING THE LEGALITY OF HOLDING THE
LORENZ-DRENCKMANN TRIAL IN BERLIN. BECAUSE OF
INSISTENCE ON KNOWING FIRST WHO THE PROSECUTION PER-
SONNEL WILL BE, THE FRENCH REP IS UNCERTAIN AS TO WHETHER
PARIS WILL AGREE TO USE OF THE STATEMENT AT THIS TIME.
THE SOVIET CHARGE IN LONDON IS CALLING AT THE FCO AT
A HIGH LEVEL TOMORROW MORNING. THE BONN GROUP
RECOMMENDS THAT IF THE CALL CONCERNS THE BERLIN
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TRIAL, LONDON (AS WELL AS WASHINGTON AND PARIS, IF
THERE ARE SIMILAR CALLS THERE) MIGHT DRAW FROM THE
TEXT IN PARAGRAPH 8 BELOW IN MAKING AN ON-THE-SPOT
REPLY. ACTION REQUESTED: APPROVAL OF THE TEXT IN
PARAGRAPH 8. END SUMMARY.

1. IN FURTHER DISCUSSION OF THE LORENZ-DRENCKMANN

TRIAL AT THE JULY 28 BONN GROUP MEETING, ALLIED REPS REITERATED THEIR CONCERNS ABOUT STATEMENTS EMANATING FROM KARLSRUHE WHICH LEFT THE IMPRESSION IN THE PRESS THAT THE FEDERAL PROSECUTOR GENERAL HAD FULL COMPETENCE IN THE TRIAL IF HE CHOSE TO EXERCISE IT. FRG REP (VON ARNIM) STATED THAT THE FOREIGN OFFICE HAD SENT A FULL REPORT TO THE MINISTRY OF JUSTICE YESTERDAY CONCERNING ALLIED VIEWS AS EXPRESSED IN THE PREVIOUS DAY'S BONN GROUP MEETING. THE FOREIGN OFFICE HAD ASKED THAT THESE VIEWS BE PASSED ON TO KARLSRUHE AND ALSO TO THE FEDERAL PROSECUTOR'S OFFICE IN BERLIN.

2. VON ARNIM SAID HE HAD NOT YET RECEIVED THE NAMES OF THE OFFICIALS WHO WERE TO HANDLE THE PROSECUTION BUT EXPECTED TO HAVE THEM SHORTLY. HE REITERATED THAT THE ASSURANCES GIVEN LAST AUGUST BY THE MINISTRY OF JUSTICE THAT THESE OFFICIALS WOULD BELONG TO THE BERLIN OFFICE WOULD OF COURSE BE HONORED, ALTHOUGH HE HAD NOT YET LEARNED WHETHER THE NECESSARY SUPPLEMENTARY PERSONNEL WERE BEING SENT TO BERLIN BY FORMAL TRANSFER (VERSETZUNG) OR BY TEMPORARY ASSIGNMENT (ABORDNUNG). IN EITHER CASE, LEGALLY THEY WOULD BELONG TO THE BERLIN OFFICE. (COMMENT: THE UNDERTAKING OF THE MINISTRY OF JUSTICE IN THIS REGARD WAS REPORTED IN REF (C). THE SPECIFIC WORDING OF THE LETTER FROM THE JUSTICE MINISTRY TO THE FOREIGN OFFICE, DATED AUGUST 4, CONFIDENTIAL

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1976, WAS THAT: "THE BUNDESANWALTSCHAFT WILL PROSECUTE THE CASE WITH OFFICIALS WHO BELONG TO THE BERLIN OFFICE.")

3. UK REP (EYERS) REFERRED ONCE MORE TO THE CONDITION EXPRESSED IN THE JULY 1976 ALLIED NON-PAPER (REF B) THAT ALL CONCERNED WOULD USE "PARTICULAR RESERVE AND DISCRETION," ESPECIALLY IN RELATION TO THE PRESS. WHAT WE HAVE SEEN SO FAR, EYERS CONTINUED, DID NOT ACCORD WITH HIS UNDERSTANDING OF "RESERVE AND DISCRETION." THIS WAS A MATTER OF SERIOUS REGRET AND ONE WHICH MADE IT DIFFICULT FOR THE ALLIES TO MAINTAIN VIS-A-VIS THE SOVIETS THAT HOLDING THE TRIAL IN BERLIN WAS PURELY A TECHNICAL MATTER WITH NO POLITICAL CONTENT.

4. EYERS SAID THAT, AGAINST THE BACKGROUND OF PUBLICITY THAT IS BUILDING UP, WHICH WAS INCONSISTENT WITH THE NON-PAPER, HE HAD CONCLUDED THAT A PUBLIC ALLIED ANNOUNCEMENT CONCERNING THE ROLE OF THE FEDERAL PROSECUTOR WAS REQUIRED ON AN URGENT BASIS. HE NOTED THAT THE BRITISH WERE ALREADY RECEIVING PRESS INQUIRIES WHICH THEY WERE TURNING AWAY RATHER

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AMEMBASSY BERLIN
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LIMPLY WITH A "NO COMMENT," AND THAT THE PUBLICITY WAS
BEGINNING TO ATTRIBUTE TO THE ALLIES AN AGREEMENT WHICH
WAS BROADER THAN THAT WHICH ACTUALLY EXISTED. EYERS
THEN TABLED A DRAFT PRESS STATEMENT.

5. BEFORE AGREEING TO DISCUSS THE DRAFT, RICHARD
(FRANCE) STATED THAT HE WISHED TO MAKE CLEAR THAT THE
DESIGNATION OF THE PROSECUTION PERSONNEL WAS FOR PARIS
A VERY IMPORTANT ELEMENT OF THE ENTIRE CASE. THE
COMMITMENT BY THE MINISTRY OF JUSTICE IN ITS AUGUST 4,
1976 LETTER WAS A CONDITION UPON WHICH FRENCH
ACCEPTANCE OF HOLDING THE TRIAL IN BERLIN WAS BASED.
HE WAS NOT CERTAIN THAT A "TRANSPARENT" ASSIGNMENT ON
A TDY BASIS WOULD BE CONSIDERED FULFILLMENT OF THAT
CONDITION.

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5. VON ARNIM THEN MADE A VERY REASONED STATEMENT ASSURING THE ALLIES THAT NOT ONLY THE FOREIGN OFFICE BUT ALSO THE MINISTRY OF JUSTICE AND THE CHANCELLERY WERE TAKING THE MATTER VERY SERIOUSLY AND, LIKE THE ALLIES, WERE TRYING TO AVOID ANY COMPLICATIONS WITH THE SOVIETS. HE NOTED, HOWEVER, THE IMPORTANCE OF THE CASE IN TERMS OF COMBATTING TERRORISM AND THE VERY LARGE PUBLIC INTEREST IN THE CASE. THAT INTEREST -- WHEN COMPOUNDED BY THE RAISING BY THE DEFENSE ATTORNEYS THEMSELVES OF QUESTIONS OF THE STATUS OF BERLIN -- COMPLICATED EFFORTS TO HANDLE THE POLITICAL ASPECTS OF THE CASE WITH SPECIAL CARE AND DISCRETION. HE QUESTIONED WHETHER WHAT PROSECUTOR GENERAL REBMANN HAD SAID IN RESPONSE TO PRESS QUERIES EXCEEDED THE MINIMUM THAT COULD BE EXPECTED UNDER THE CIRCUMSTANCES. NEVERTHELESS, HE REITERATED THAT THE FOREIGN OFFICE HAD AGAIN POINTED TO THE NEED FOR RESTRAINT.

6. AS FOR RICHARD'S POINT, VON ARNIM SAID THE ALLIES COULD BE ASSURED THAT THE MINISTRY OF JUSTICE COMMITMENT WOULD BE KEPT. HE ADMITTED THAT THE WORD "BELONG" IS OPEN TO INTERPRETATION, AND IT WAS NOT DISCUSSED AT THE TIME. IT HAS BEEN ASSUMED FOR MONTHS, HOWEVER, AND ALLUDED TO IN THE PRESS THAT THERE WOULD HAVE TO BE A DETAILING (ABORDNUNG) OF ADDITIONAL TRIAL PERSONNEL TO THE BERLIN OFFICE.

7. AS FOR ISSUANCE OF AN ALLIED STATEMENT, VON ARNIM EXPRESSED THE VIEW THAT TIMING SHOULD BE CONSIDERED CAREFULLY. HE NOTED THAT THE TRIAL WOULD BE A LONG ONE AND THAT THE SOVIETS WOULD HAVE MANY OPPORTUNITIES TO BRING FRESH PROTESTS. HE THEREFORE THOUGHT THAT NOW WAS NOT THE BEST TIME FOR A FORMAL ALLIED
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STATEMENT.

8. EYERS DISAGREED WITH THE LAST POINT, OBSERVING THAT IT WOULD BE BETTER TO HAVE THE ALLIED POSITION ON THE PUBLIC RECORD BEFORE THE SOVIETS MADE THEIR NEXT PROTEST (WHICH HE EXPECTED TO BE SOON). HE CLARIFIED THAT HE DID NOT HAVE IN MIND USING HIS DRAFT AS A FORMAL ALLIED ANNOUNCEMENT BUT RATHER AS A RESPONSE TO THE PRESS INQUIRIES THAT WERE ALREADY COMING IN. AFTER CONSIDERABLE DISCUSSION, AD REF AGREEMENT WAS REACHED ON THE FOLLOWING TEXT FOR AN ALLIED STATEMENT:

BEGIN TEXT

THE RESPONSIBILITIES IN BERLIN OF OFFICERS OF THE
BUNDESANWALTSCHAFT FLOW FROM FEDERAL LEGISLATION
WHICH HAS BEEN ADOPTED BY THE BERLIN HOUSE OF
REPRESENTATIVES AS BERLIN LAW. THE FUNCTIONS OF
SUCH OFFICERS IN BERLIN ARE EXPRESSLY SUBJECT TO
THE POWERS AND JURISDICTION OF THE ALLIED
AUTHORITIES. ACCORDINGLY, THE PROSECUTION OF THIS
CASE IN BERLIN BY SUCH OFFICERS IS NOT AN ACT BY
A FEDERAL BODY IN EXERCISE OF DIRECT STATE
AUTHORITY OVER BERLIN, HAS NO EFFECT ON THE STATUS
OF THE CITY AND IS IN NO WAY INCONSISTENT WITH THE
QUADRIPARTITE AGREEMENT.

END TEXT

9. THE US AND UK REPS WERE PREPARED TO RECOMMEND THAT
THE STATEMENT BE USED IN ANSWER TO QUESTIONS,
AND VON ARNIM AGREED. RICHARD, HOWEVER, MAINTAINED

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RESERVATIONS AS TO USAGE. ON THE BASIS OF RECENT SOUNDINGS FROM PARIS, HE THOUGHT THE FRENCH MIGHT PREFER (A) TO ISSUE A FORMAL DECLARATION, BUT (B) NOT TO DO SO UNTIL THE GERMANS HAD CLARIFIED THE IDENTITY OF THE PROSECUTION PERSONNEL. TO ISSUE SUCH A STATEMENT NOW MIGHT SOUND LIKE A COMMITMENT BY THE ALLIES TO PERMIT PERSONNEL FROM KARLSRUHE TO CONDUCT THE TRIAL. HE THEREFORE WAS NOT AT ALL CERTAIN HOW PARIS WOULD REACT TO EITHER THE WORDING OR THE USAGE OF THE ABOVE TEXT.

10. BOTH US AND UK REPS ARGUED THAT AN ATTEMPT BY THE FRG TO SEND PERSONNEL FROM KARLSRUHE WOULD BE A SEPARATE ISSUE WHICH WOULD BE IN VIOLATION OF THE CLEAR UNDERSTANDING WHICH EXISTS AMONG OUR GOVERNMENTS AND WOULD PRESENT AN ISSUE OF A DIFFERENT
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MAGNITUDE. THERE WAS NO INDICATION THAT SUCH A STEP WAS LIKELY -- AND VON ARNIM STRESSED THAT IT WAS A NON-PROBLEM -- AND IN ANY CASE SO FAR AS A PUBLIC POSITION WAS CONCERNED THE WORDING OF THE ABOVE TEXT WOULD REMAIN CORRECT. RICHARD CONTINUED TO INSIST THAT THE DIFFERENCE BETWEEN "ABORDNUNG" AND "VERSETZUNG" WAS VERY IMPORTANT AND COULD ONLY AGREE TO REFER THE MATTER TO PARIS, WHICH HAD THE FEELING THAT THE ALLIED PRECONDITIONS HAD NOT YET BEEN MET.

11. COMMENT: FRENCH CONCERNS WERE REINFORCED BY NEWLY ARRIVED FRENCH AMBASSADOR BRUNET DURING HIS INITIAL COURTESY CALL ON THE AMBASSADOR THIS AFTERNOON. BRUNET SAID THE CASE WAS BEING HANDLED VERY BADLY BY THE FEDERAL PROSECUTOR'S OFFICE AND THAT EVEN THOUGH THE FOREIGN OFFICE WAS MAKING THE RIGHT NOISES IT COULD EXERCISE LITTLE CONTROL. BRUNET THOUGHT THE ALLIES MIGHT HAVE TO TAKE FORCEFUL ACTION. END COMMENT.

12. WITH REGARD TO THE WORDING OF THE PROPOSED STATEMENT, VON ARNIM EXPRESSED FAMILIAR OBJECTIONS TO USE OF THE TERM "BERLIN LAW" IN THE FIRST SENTENCE. ALLIED REPS AGREED TO USE ALSO THE TERM "FEDERAL LEGISLATION," SO THAT THE FORMULATION IN THE FIRST SENTENCE CONFORMS TO THE WORDING OF BK/O(50)75. THE WORDING OF THE SECOND SENTENCE IS BASED ON BK/O(51)63.

13. NEAR THE END OF THE BONN GROUP MEETING, EYERS WAS INFORMED BY TELEPHONE THAT THE SOVIET CHARGE D'AFFAIRES IS CALLING ON MINISTER OF STATE JUDD TOMORROW MORNING (JULY 29). LONDON DID NOT KNOW THE SUBJECT OF THE CALL. THE BONN GROUP SPECULATED THAT IT COULD

CONCERN THE LORENZ PROSECUTION; THE GDR HAD ALREADY
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EXPRESSED A STRONG PROTEST VIA ADN WHICH WAS PUBLISHED
IN NEUES DEUTSCHLAND ON JULY 28. THE BONN GROUP WAS
OF THE OPINION THAT IF THE SOVIETS ARE CALLING IN ALL
THREE CAPITALS ON THIS SUBJECT, ALLIED OFFICIALS
RECEIVING THEM MIGHT DRAW UPON THE TEXT IN PARAGRAPH 8
ABOVE FOR AN ON-THE-SPOT REPLY.

14. ACTION REQUESTED:

A. APPROVAL OF THE TEXT IN PARAGRAPH 8 ABOVE FOR
USE BY ALLIED OFFICIALS IN RESPONDING TO PRESS
INQUIRIES CONCERNING THE LEGALITY OF HOLDING
THE TRIAL IN BERLIN;

B. AN INDICATION OF THE DEPARTMENT'S VIEWS ON
ISSUING THIS STATEMENT AS A FORMAL ALLIED DECLARATION
IF PARIS SO INSISTS; AND

C. THAT ALLIED OFFICIALS DRAW FROM THIS TEXT
FOR AN ON-THE-SPOT REPLY TO ANY SOVIET PROTEST THAT
MAY BE RECEIVED.
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Message Attributes

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Disposition Approved on Date:
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Disposition Date: 22 May 2009
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